



GLOBAL VIETNAM  
LAWYERS

# LEGAL NEWSLETTER

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## MAIN CONTENTS

### LATEST LEGAL UPDATE

1. Law on Electronic Transactions 2023.
2. Law on Protection of consumer rights 2023.
3. Law on Bidding 2023.

### LEGAL GUIDANCE

1. Issue invoices to business households according to the presumptive method.
2. Regulations on invoices and tax policies for real estate transfer activities.
3. Trade discount invoice.
4. Invoice when selling vouchers and gift vouchers via e-commerce platform.

### GOOD READINGS FOR YOU

1. Project owners are still eligible for bank loans despite their ineligibility for business.
2. The State Bank asks for continuation to reduce lending interest rates by 1.5 to 2%.

### NEWLY ISSUED LEGAL DOCUMENTS

On 17 July 2023, the Office of the President held a press conference to announce the President's Order on the 8 laws just passed by the 15th National Assembly at its 5th session. Accordingly, the 8 laws just passed by the National Assembly include: Law on Electronic Transactions; Law on Bidding; Law on Cooperatives; Law on Protection of consumer rights; Law on Prices; Law on amending and supplementing a number of articles of the Law on People's Public Security; Law on amending and supplementing a number of articles of the Law on exit and entry of Vietnamese citizens and the Law on Foreigners' entry into, exit from, transit through and residence in Vietnam; Law on Civil Defense. Notable are the following new regulations and policies:

## 1. Law on Electronic Transactions 2023

On 22 June 2023, the National Assembly passed the Law on Electronic Transactions No. 20/2023/QH15, effective from 1 July 2024 ("**Law on E-Transactions 2023**") with some notable novelties as follows:

### 1.1 The Law on E-Transactions 2023 only provides for transactions by electronic means

Regarding the scope of regulation, the Law on E-Transactions 2023 only provides for transactions by electronic means, but does not stipulate the content, conditions and form of electronic transactions ("**e-transactions**"). Specifically, an e-transaction is one made by electronic means, in simple terms, this is a transaction made through the internet, which does not require the parties to conduct the transaction in person as compared to a traditional transaction.

In case other laws stipulate or do not stipulate that transactions are conducted by electronic means, the Law on E-Transactions 2023 will apply. If other laws stipulate that transactions by electronic means are not allowed, the provisions of such laws will apply.

### 1.2 Law on E-Transactions 2023 inherits, amends and supplements the concept of "electronic signature"

- According to the Law on E-Transactions 2023, the electronic signature ("**e-signature**") is understood as a signature created in form of electronic data attached to or logically associated with a data message to identify the signer and confirm his or her consent to the data message.
- According to the scope of use, e-signatures can be divided into 3 types, including: specialised e-signatures, public digital signatures, and public service digital signatures.
- E-signatures have legal value as follows:
  - E-signatures will not be denied the legal value just because they are expressed under the form of e-signature.
  - A specialised e-signature or a digital signature has the same legal value as that individual's signature in a paper document.

- Where the law stipulates that a document must be certified by an agency or organisation, that requirement is deemed to apply to a data message if that data message is certified with a specialised e-signature or a digital signature of that agency or organisation.
- The information contained in the e-deed can be accessible and usable in its entirety.
- Where the law requires indication of the time of making the e-deed, the e-deed must be marked with the time.

### 1.3 The Law on E-Transactions 2023 amends the concept of “e-deed” and adds provisions to ensure legal validity for this form of deed to promote e-transactions

- According to the Law on E-Transactions 2023, an e-deed is a data message issued by a provider of e-signature authentication service to confirm that the authenticated agency, organisation or individual is the one who gives the e-signature. Meanwhile, according to the new regulations, an e-deed means a license, certificate, credit, confirmation document, other written consent issued by a competent agency or organisation in form of electronic data.

- In addition to amending the concept, the Law on E-Transactions 2023 also adds provisions on the legal validity of e-deeds in Article 19. Accordingly, the information in an e-deed is of legal value when it fully meets the following requirements:

- The e-deed is made with the digital signature of the issuing agency or organisation.

- Of note, e-deeds issued by competent foreign agencies and organisations must be consularly legalized in order to be recognized and used in Vietnam, except for cases exempted by the Vietnamese law.

### 1.4 The Law on E-Transactions 2023 recognises the value of data messages

Data messages can be presented in form of electronic documents, e-deeds, electronic supporting documents, electronic contracts, electronic mails, telegrams, telegraphs, faxes and other forms electronic data communication. A data message has the same value as a text, can be used and has the same value as the original, and can be used as evidence in accordance with the law on civil procedures.

Data messages are created or generated during a transaction or converted from paper documents. The conversion of data messages from paper documents must fully meet the following conditions:

- Information in the data message must be as complete as in the paper document.
- Information in the data message can be accessible and used for reference.

- Having a unique symbol indicating that the data message has been converted from a paper document and information of the agency, organisation or individual performing the conversion.
- In case the paper document is a license, certificate, credit, confirmation document or other written consents issued by a competent agency or organisation, there must be the digital signature of the agency or organisation performing the conversion, unless otherwise provided for by law.

#### 1.5 Trust services in e-transactions are governed by law for the first time

This is a new type of service recognised in the Law on E-Transactions 2023. According to Article 28 of this Law, the trust services include: timestamp making service, data message authentication service, and public digital signature authentication service.

Trust service is a conditional business line. A trust service provider must have a service provision license issued by the Ministry of Information and Communications. The term of the trust service provision license is 10 years.

For organisations providing e-contract authentication services in trading activities do not need to have a service provision license issued by the Ministry of Information and Communications, but they must meet the conditions for providing e-contract authentication services in accordance with the law on e-commerce and the conditions for providing trust service as prescribed in

Article 29 of the Law on E-Transactions 2023.

#### 1.6 The Law on E-Transactions 2023 adds a number of prohibited acts in e-transactions

Compared with the Law on E-Transactions 2005, the Law on E-Transactions 2023 has more detailed regulations on some prohibited acts in e-transactions, creating favorable conditions for law compliance. Particularly:

- Abusing e-transactions to infringe upon national interests, national security, social order and safety, public interests, and legitimate rights and interests of agencies, organisations and individuals.
- Illegally collecting, providing, using, disclosing, displaying, distributing and trading data messages.
- Committing frauds, forgery, misappropriation or illegal use of e-transaction accounts, e-deeds, e-signature authentication deeds and e-signatures.
- Other acts prohibited by law.

#### 1.7 Recognition of foreign providers of e-signature authentication service; recognition of foreign e-signatures and e-signature authentication deeds

According to Article 26 of the Law on E-Transactions 2023, one of the important conditions for recognition of foreign providers of e-signature authentication service; recognition of foreign e-signatures and e-signature

authentication deeds in Vietnam is that the foreign e-signature or the e-signature authentication deed must conform to the standards and norms of e-signatures or e-signature authentication deeds as prescribed by the Vietnamese law, to the recognised international standards or international treaties to which Vietnam is a signatory. In addition, an e-signature

authentication deed must be formed based on the fully authenticated identification information of foreign organisations or individuals.

In addition, according to Article 27 of the Law on E-Transactions 2023, foreign e-signatures or e-signature authentication deeds can be accepted in international transactions.

## 2. Law on Protection of consumer rights 2023

On 20 June 2023, the National Assembly passed the Law on Protection of consumer rights No. 19/2023/QH15 effective from 1 July 2024 ("**Law on PCR 2023**") with the following highlights:

### 2.1 Expanding the concept of consumer

The Law on PCR 2023 adds the criterium "not for commercial purposes" to identify consumers, providing a uniform basis for identifying consumers. Accordingly, a consumer is defined as a person who buys products, goods and services for consumption and daily use by his/herself, for their families, agencies or organisations but not for commercial purposes. Meanwhile, the Law on PCR 2010 only defines consumers as those who buy products, goods and services for consumption and daily use by themselves, for their families, agencies or organisations.

they collect, store and use personal information of consumers:

- Business organisations and individuals may, by themselves or by authorisation or hiring third parties to, collect, store, use, edit, update and destroy information of consumers. In case of authorising or hiring a third party to collect, store, use, edit, update or destroy information of consumers, the consent of consumers must be obtained and there must be a document specifying the scope and responsibilities of each party in protecting consumer information.

### 2.2 Protecting and ensuring the safety and security of consumers' personal information

The Law on PCR 2023 provides for the responsibility to protect and ensure the safety and security of personal information of consumers, assumed by business entities and individuals when

- Before collecting and using personal information of consumers, business organisations and individuals must notify the purpose, scope of collection and use of information, and the duration of storing information, and must obtain the consent from consumers.

- Business organisations and individuals must establish

information protection rules that are generally applicable to consumers.

- The collection, storage and use of personal information of consumers must make sure of safety and security. Business organisations and individuals must take measures to prevent acts of theft or unauthorised access to information, prevent unauthorised use, modification, update or destruction of information.

### 2.3 Handling defective products and goods

- The Law on PCR 2023 divides defective products and goods into 2 groups: group A includes products and goods that are likely to cause damage to the life and health of consumers; and group B includes products and goods that are likely to cause damage to consumers' property.
- In case of detecting defective products or goods, they will be handled as follows:

- For products and goods of group B, business organisations and individuals must:
  - (i) Stop providing, and recall defective products and goods in the market.
  - (ii) Disclosing defective products and goods, and notify the recall of such products and goods in form of posting at the head office or business location and posting on the

website, computer software (if any) of the business organisation or individual until end of the recall.

- For products and goods of group A: in addition to handling products and goods in the same way as group B, business organisations and individuals must publicly disclose the defective products and goods and the recall of such products and goods for at least 05 consecutive issues or 05 consecutive days on radio, television stations, printed newspapers, and electronic newspapers at central and local levels where such products and goods circulate.
- If the defective products and goods belong to both groups A and B, they will be handled according to regulations on defective products and goods of group A.

### 2.4 Novelties on remote transactions

According to the Law on PCR 2023, remote transactions are understood as transactions made in cyberspace, by electronic means or other means in which consumers cannot check, feel or come into direct contact with the products, goods and services before entering into the transactions.

When performing remote transactions, business organisations and individuals must provide accurate and complete information to consumers through such forms as telephone, or other forms of

communication, conversation, or in cyberspace.

In addition, when conducting remote transactions with consumers, business entities and individuals are responsible for developing tools and measures so that consumers can review and consider contract information; confirm their consent to enter into the contract; review and download the contract signed by consumers.

## 2.5 Registration of model contracts and general trading conditions

According to Article 28.1 of the Law on PCR 2023, business organisations and individuals trading in products, goods and services that have a large number of regular consumers who may be subject to direct and long-term impacts of the products, goods and services, must register a model contract, and general trading conditions with the state management agency in charge of protecting consumers' interests before they are used to enter into contracts with consumers. The list of products, goods and services subject to this regulation is promulgated by the Prime Minister.

## 2.6 Adding the subjects as vulnerable consumers

According to Article 8.1 of the Law on PCR 2023, vulnerable consumers are understood as consumers who are likely to suffer many adverse impacts on access to information, health, property, dispute settlement at the time of purchase or use of products, goods and services.

Accordingly, vulnerable consumers include the following 7 subjects: the elderly; people with disabilities; children; ethnic minorities; people living in ethnic minority and mountainous areas, islands, areas with difficult socio-economic conditions, areas with extremely difficult socio-economic conditions as prescribed by law; women who are pregnant or nursing a child under 36 months old; people suffering from serious diseases; and members of poor households as prescribed by law.

## 2.7 Adding the prohibited acts in protecting consumer rights

Compared with the LPCR 2010, the LPCR 2023 has added a number of prohibited acts in the protection of consumers' interests, including general prohibited acts and prohibited acts for organisations, individuals involved in multi-level selling, and prohibited acts for business organisations and individuals setting up, operating, and providing digital platform services. Accordingly, organisations and individuals doing business in setting up, operating and providing digital platform services are strictly prohibited from performing the following acts:

- Forcing or preventing consumers from registering to use or using other digital intermediaries as a mandatory condition for using the service;
- Limiting the right of consumers to choose by prioritising the selection of products, goods and services among organisations and individuals doing business by providing on digital platforms

without publicising the selection criteria;

- Using measures to prevent display or display dishonestly results of feedback and evaluation of consumers about products, goods, services, organisations and individuals doing business on digital platforms, except for cases where feedback, evaluation that violates the provisions of law, being contrary to social ethics;
- Using measures to prevent registration, operation, evaluation, and display of feedback from social organisations participating in consumer protection;
- Preventing consumers from removing pre-installed software

and applications without affecting basic technical features that help digital platforms operate normally or force consumers to install accompanying software and applications on digital platform.

### 2.8 Transactions of less than VND 100 million are settled according to the summary procedure

According to Article 70 of the LPCR 2023, the civil cases on protection of consumers' interests with a transaction value of less than VND 100 million will be settled according to the summary procedures without meeting any other conditions. For other cases, if the conditions specified in Article 317.1 of the Civil Procedure Code 2015 are fully satisfied, they will be resolved according to the summary procedures.

## 3. Law on Bidding 2023

On 23 June 2023, the National Assembly passed the Law on Bidding No. 16/2023/QH15 effective from 1 January 2024 ("LOB 2023") with some notable novelties as follows:

### 3.1 Modification of bid security for contractor selection

According to Article 14.4 of the LOB 2023, based on the scale and nature of each project, business investment project, specific bid package, the bid security level in the bidding documents is prescribed:

- (i) From 1% to 1.5% of the bid package price, applicable to construction and installation bid packages, mixed packages with a package price of not more than VND 20 billion, bid packages for procurement of goods and non-consulting services with

the package price not exceeding VND 10 billion.

- (ii) From 1.5% to 3% of the bid package price, applicable to bid packages not falling into case (i).
- (iii) From 0.5% to 1.5% of total investment capital of business investment projects applied to investor selection.

### 3.2 Shortening the deadline for return of bid security

Article 14.8 of the LOB 2023 stipulates that the bid solicitor is responsible for returning or releasing the bid security



to the contractor, the investor may not be selected within the time limit specified in the bidding documents but not more than 14 days from the date of approval of contractor and investor selection results. For selected contractors and investors, the bid security will be refunded or released when the contract becomes effective (*Meanwhile, the LOB 2013 stipulates a maximum return period of 20 days from the date on which the results of contractor and investor selection are approved*).

### 3.3 Cases where the bid package costs less than VND 5 billion, the competitive offer form will be applied

According to Article 24 of the LOB 2023, competitive offers are applied to bid packages with the package price not exceeding VND 5 billion in one of the following cases:

- (i) Simple and common non-consulting service bid package;
- (ii) Bid packages for procurement of common goods, available on the market with standardised specifications and equivalent in quality;
- (iii) Bid package for construction and installation of simple works with approved construction drawing design; and
- (iv) Mixed bid package for goods supply and construction and installation, in which construction and installation contents meet the requirements in case (iii) of this section.

### 3.4 Adding the acts that are considered to be bid collusion, and obstruct bidding activities

Compared with the LOB 2013, Article 16 of the LOB 2023 has added a number of acts that are considered to be bid collusion, obstructing bidding activities:

- Competent and experienced bidders and investors have participated in the bidding and met the requirements of the bidding documents but intentionally failed to provide documents to prove their capacity and experience when requested by the bid solicitor to clarify bids or when required to compare documents in order to facilitate a bid winning party to be considered a bid collusion.
- Acts of deliberately making false complaints, denunciations or recommendations to obstruct bidding activities; and acts of violating the law on network safety and security in order to interfere with and obstruct online bidding is considered an act of obstructing bidding activities.

### 3.5 Novelty on selection of contractors to supply drugs, chemicals, testing materials, medical equipment

According to Article 55 of the LOB 2023:

- The medical examination and treatment establishments can choose contractors to supply chemicals, testing materials and medical equipment. For the purchase of drugs that are not on the list of drugs paid for by the

health insurance fund or the purchase of vaccines for immunisation in form of services, the medical examination and treatment establishments and the medical establishments make their own decisions on procurement on the basis of ensuring publicity, transparency, economic efficiency and accountability.

- If the private medical examination and treatment establishments do not choose to apply the LOB 2023 for the purchase of drugs, chemicals, testing supplies and medical equipment, such medical examination and treatment establishments will be only paid from the health insurance fund according to the exact price of drugs, chemicals, testing supplies, and medical equipment according to the winning bids of the public

medical examination and treatment establishments at the provincial level, central level or medical examination and treatment establishments of the same professional and technical level in the same area. If there is no winning bid price of a public medical examination and treatment facility at the provincial or central level or a medical examination and treatment facility of the same professional and technical level in the same locality, the said regulations will apply.

### 3.6 Online bidding is applied to all bid packages from 2025

According to Article 50.1(b) of the LOB 2023, from 1 January 2025, online bidding will be applied to all bidding packages, except for no bidding on the National Procurement Network as prescribed.

### 1. Issue invoices to business households according to the presumptive method

In case a business household paying taxes by the presumptive method signs a contract to provide services to the Company, and if it needs an invoice to deliver to the Company, the business household will be issued an electronic invoice by the tax authority each arising time as prescribed in Article 91.4 of the Law on Tax Administration 2019, Article 13 of Decree 123/2020/ND-CP and Article 6.2 of Circular 78/2021/TT-BTC.

For arising expenses related to service provision contracts of business households, if the Company fully meets the conditions specified in Article 4 of Circular 96/2015/TT-BTC, they will be included in deductible expenses when determining the *taxable income* of the corporate income tax.

*Ha Noi City Tax Department replies to the question of Panasonic Vietnam Co., Ltd. in Official Letter No. 56954/CTHN-TTHT dated 04/8/2023.*

calculation is the total amount of sales of goods and services actually written on the sales invoice for goods and services subject to VAT as prescribed in Article 13.2 of Circular 219/2013/TT-BTC. The Company declares and submits VAT declarations each arising time according to form No. 04/GTGT issued together with Circular 80/2021/TT-BTC.

- Regarding corporate income tax (CIT): the income from transfer of ownership or right to use houses is subject to CIT as prescribed in Article 16.2 of Circular 78/2014/TT-BTC. CIT on real estate transfer will be applied as prescribed in Article 17 of Circular 78/2014/TT-BTC. The Company declares and submits CIT declaration from real estate transfer according to form No. 02/TNDN issued together with Circular 80/2021/TT-BTC.

*Ha Noi City Tax Department replies to the question of Fev Eterno (Vietnam) Co., Ltd. in Official Letter No. 56948/CTHN-TTHT dated 04/8/2023.*

### 2. Regulations on invoices and tax policies for real estate transfer activities

In case the Company calculates value-added tax (VAT) by the direct method on VAT, with real estate transfer activities generated, the sales invoice will be used as prescribed in Article 8.2 of Decree 123/2020/ND-CP.

- Regarding VAT: the amount of VAT payable by the method of calculating directly on VAT equals the percentage multiplied by the revenue; revenue for VAT

### 3. Trade discount invoice

In case the business establishment applies the form of commercial discount for customers (if any), the VAT calculation price is the sales price already discounted commercially for the customer.

In case the commercial discount is based on the quantity and sales of goods or services, the discount amount of the sold goods will be adjusted on the goods and service sale invoice of the last purchase or next period.

In case the discount amount is made at the end of the sales discount programme (period), an adjusted invoice will be issued with a list of the invoice numbers to be adjusted, the adjusted amount and tax amount.

Based on the adjusted invoice, the seller and the buyer declare and adjust the sales and purchase revenue, output and input taxes.

*General Department of Taxation replies to the question of Angel Vietnam Joint Stock Company in Official Letter No. 3292/TCT-CS dated 02/8/2023.*

#### **4. Invoice when selling vouchers and gift vouchers via e-commerce platform**

In case the Company signs a cooperation contract with another company to implement a preferential programme for customers (selling in

form of discount vouchers) as prescribed by commercial law, the Company is not required to issue invoices and declare VAT that is applicable for making receipts/expenditures. When customers use vouchers to buy goods and services, the goods or service provider will issue a VAT invoice and declare VAT for the goods sold according to regulations.

Actual expenses incurred related to production and business activities of enterprises that satisfy the conditions specified in Article 4 of Circular 96/2015/TT-BTC will be included in deductible expenses when determining the taxable incomes of enterprises.

*Ha Noi City Tax Department replies to the question of Capichi Vietnam Co., Ltd. in Official Letter No. 54963/CTHN-TTHT dated 31/7/2023.*

## 1. Project owners are still eligible for bank loans despite their ineligibility for business

The Ministry of Industry and Trade has According to Mr Le Hoang Chau, Chairman of Ho Chi Minh City Real Estate Association (HoREA), on 14 August 2023, Mr Pham Thanh Ha, Deputy Governor of the State Bank of Vietnam (SBV) sent information to HoREA and said that the State Bank's leaders assigned the Director of Credit Department to check again to properly cite the provisions on business conditions of the Law on Real Estate Business (if necessary). On 15 August 2023, Ms- Nguyen Thi Hong, Governor of the SBV, also sent information to HoREA twice to confirm that the investor was still allowed to borrow credit.

After that, HoREA continued to request the Governor of the SBV to consider amending Circular 06/2023/TT-NHNN "properly". Because, real estate projects, public-private partnership (PPP) projects only need to be "legal enough" rather than "qualified for

business" so that credit institutions are easy to understand, easy to do and investors do not face obstacles when applying for credit. Thereby implementing the Government's Resolution 33, which requires all entities to join hands to remove difficulties for the safe, healthy and sustainable development of the real estate market, and implement the Government's Resolution 97 on the transition to the implementation of proactive, flexible monetary policy towards appropriate, timely and effective ease.

Right after that, Ms Nguyen Thi Hong sends information to HoREA, confirming that the investor can still borrow regardless of that the project is ineligible or eligible for business. At the same time, she says she will send staff to discuss directly with HoREA leaders.

*By thanhnien.vn*

## 2. The State Bank asks for continuation to reduce lending interest rates by 1.5 to 2%

The SBV has just issued Document 6385/NHNN-CSTT to credit institutions and foreign bank branches requesting the continued implementation of solutions to reduce interest rates.

Accordingly, following the direction of the Government, the Prime Minister and the SBV require credit institutions to reduce lending interest rates for existing outstanding loans and new loans to strive for a minimum interest rate reduction of 1.5-2% per year towards supporting enterprises and people in recovering and developing production and business.

The SBV also requires credit institutions to report their commitment to reduce lending interest rates in 2023 for

existing loans and new loans before 25 August 2023.

In addition, report the results of the implementation of the commitment to reduce lending interest rates in 2023 for existing outstanding loans and new loans to the SBV before 08 January 2024.

From the beginning of 2023 up to now, the SBV has continuously reduced the operating interest rates with a total reduction of 0.5-2% per year. At the same time, the SBV directs credit institutions to thoroughly reduce costs to lower lending interest rates to assist enterprises, people and the economy in recovering production and business.

*By cafef.vn*

| No.  | Document title  | Issuance date | Effective date |
|--|---|---------------|----------------|
| <b>NATIONAL ASSEMBLY</b>                       |   |               |                |
| 1  | Law No. 23/2023/QH15 amending and supplementing a number of articles of the Law on exit and entry of Vietnamese citizens and the Law on Foreigners' entry into, exit from, transit through and residence in Vietnam.  | 24/6/2023     | 15/8/2023      |
| 2  | Law No. 22/2023/QH15 on Bidding.  | 23/6/2023     | 01/1/2024      |
| 3  | Law No. 20/2023/QH15 on E-Transactions.   | 22/6/2023     | 01/7/2024      |
| 4  | Law No. 19/2023/QH15 on Protection of consumer rights.  | 20/6/2023     | 01/7/2024      |
| 5  | Law No. 17/2023/QH15 on Cooperative.  | 20/6/2023     | 01/7/2024      |
| 6  | Law No. 16/2023/QH15 on prices.   | 19/6/2023     | 01/7/2024      |
| <b>GOVERNMENT</b>                              |   |               |                |
| 1  | Decree 56/2023/ND-CP amending and supplementing a number of articles of Decree 96/2016/ND-CP stipulating security and order conditions for a number of conditional investment and business lines, Decree 99/2016/ND-CP on management and use of seals, Decree 137/2020/ND-CP on management and use of firecrackers. | 24/7/2023     | 15/8/2023      |
| 2  | Decree 47/2023/ND-CP amending and supplementing a number of articles of Decree 62/2017/ND-CP detailing a number of articles of, and providing measures to implement, the Law on Property Auction.   | 03/7/2023     | 01/9/2023      |
| <b>MINISTRY OF CULTURE, SPORTS AND TOURISM</b> |   |               |                |
| 1  | Circular 09/2023/TT-BVHTTDL promulgating the List of exported and imported goods under the specialised cultural management of the Ministry of Culture, Sports and Tourism, determining commodity codes according to Vietnam's List of exports and imports.  | 09/8/2023     | 06/10/2023     |
| <b>STATE BANK OF VIETNAM</b>                   |   |               |                |
| 1  | Circular 09/2023/TT-NHNN guiding the implementation of a number of articles of the Anti-Money Laundering Law.   | 28/7/2023     | 28/7/2023      |
| <b>MINISTRY OF PUBLIC SECURITY</b>             |   |               |                |
| 1  | Circular 31/2023/TT-BCA providing for passport forms, travel document forms and related forms.  | 20/7/2023     | 15/8/2023      |



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